

Schreiber v K-Sea Transportation LLC
2004 NY Slip Op 30151(U)
August 11, 2004
Supreme Court, New York County
Docket Number: 0104992/2004
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

JANE S. SOLOMON

PRESENT: _____

PART 55

Justice

0104992/2004

SCHREIBER, NICHOLAS
vs
K-SEA TRANSPORTATION CORP.

INDEX NO. _____

MOTION DATE 6/23/04

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

SEQ. 1
COMPEL

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits	_____
Replying Affidavits	_____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that ^{these} ~~the~~ motions are decided as follows:

By virtue of the decision filed in the related action by the same parties under index number 107571/04, a copy of which is attached hereto, the motion to compel arbitration is denied and the cross-motion to stay the arbitration is granted.

N.B. Counsel shall appear for a preliminary conference in Part 55, 60 Centre Street, Room 432, on September 13, 2004 at noon.

FILED
AUG 23 2004
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 8/11/04

JANE S. SOLOMON
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE of NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 55
-----x

NICHOLAS SCHREIBER,

Petitioner,

INDEX No. 107571/04

-against-

DECISION and ORDER

K-SEA TRANSPORTATION CORP., and
K-SEA TRANSPORTATION LLC,

Respondents.

-----x

JANE S. SOLOMON, J.:

At issue in this case is the validity of a post-injury arbitration agreement between a maritime employer and its seaman employee. The employee, plaintiff Nicholas Schreiber ("Schreiber"), commenced this petition to permanently stay the arbitration sought by defendants K-Sea Transportation Corp. ("K-Sea Corp.") and K-Sea Transportation LLC ("K-Sea LLC") (together referred to as "K-Sea"), or, alternatively, for a temporary stay pending discovery. K-Sea cross-moves to compel arbitration.

In a separate action under index number 104992/04, Schreiber asserts a claim against K-Sea Corp. for personal injury pursuant to 46 U.S.C. § 688, informally known as the Jones Act. Additionally, Schreiber asserts the causes of action of unseaworthiness and maintenance and cure against K-Sea Corp. and K-Sea LLC. In that action, defendants filed an answer and moved to stay the proceedings and compel arbitration of this dispute. In response, Schreiber cross-moved to permanently stay

arbitration and made this petition. The same facts and substantially identical papers underly the motions in both cases.

Facts

Schreiber and K-Sea are involved in a dispute regarding an injury that Schreiber suffered while employed by K-Sea, and an arbitration agreement that the parties signed after his injury. Schreiber worked as an engineer on the tugboat Tasman Sea, which was owned and maintained by K-Sea. Schreiber claims that while the Tasman Sea was en route from Tampa, Florida to New Orleans, Louisiana on October 30, 2002, the deck plate he was walking on dislodged and caused him to fall and injure his leg and knee. Upon docking in New Orleans, Schreiber sought medical treatment at a local hospital emergency room. He then returned to his residence in Florida and saw a physician there.

According to a November 26, 2002 medical report from Schreiber's physician in Florida, he had a likely tear of the meniscus in his left knee, and a lateral tear of a ligament in his right ankle. The report also stated that Schreiber then was unable to work, and recommended that he undergo arthroscopic surgery on his left knee. Schreiber had the surgery in January of 2003, and has had several subsequent surgeries on both his knee and his ankle. He has not returned to work.

Schreiber is a member of the Local 333 United Marine Division union. Pursuant to a contractual obligation with the

union, K-Sea is required to pay Schreiber \$15 per day in maintenance and to cover his medical expenses until he is either ready to return to duty or until his maximum medical cure has been reached. K-Sea has continued to pay these obligatory expenses.

In December of 2002, Alton Peralta ("Peralta"), the claims manager for K-Sea, contacted Schreiber. Peralta made a conditional offer to Schreiber, whereby K-Sea would pay Schreiber his "average two-thirds net weekly wage as an advance against settlement" if he agreed to pursue any legal claims stemming from his injury in private arbitration rather than in litigation. On December 16, 2002, Peralta sent the proposed Claims Arbitration Agreement to Schreiber with a letter stating that Schreiber was under no obligation to sign the agreement, and that he would continue to receive his \$15 daily maintenance and cure regardless of whether he signed it. Schreiber signed the arbitration agreement on December 19, 2002, and began to receive biweekly settlement advance checks in the amount of \$925.51.

According to the agreement, if either party made a demand for arbitration, K-Sea would pay "any filing fee, up to \$750.00", and "any deposit for compensation of the arbitrators, shall be advanced by K-Sea, subject to subsequent allocation." Both Peralta's letter and the agreement included boldly printed text that acknowledged that no other promises were made to

Schreiber, and no coercion was used to make him agree to arbitration.

Notwithstanding the agreement, Schreiber filed suit against K-Sea on March 26, 2004; on April 7, 2004 K-Sea demanded arbitration with the American Arbitration Association ("the AAA"), naming Schreiber as the claimant seeking "monetary damages-amount to be determined." K-Sea sent its \$750 check as its required contribution to the filing fee. The AAA acknowledged receipt of the \$750, but responded that a \$10,000 minimum filing fee was required because no "claim amount" was specified. The AAA informed both parties that if the remaining \$9,250 balance was not paid by May 7, 2004, the paperwork would be returned. The balance has not been paid and the arbitration proceedings have not proceeded.

Schreiber contends he would not have entered into the agreement had he known of the large filing fee and other expenses, namely, the rather large hourly fees of the arbitrators, so that he should be released from the arbitration agreement, on the grounds that he was taken advantage of by his employer when he did not understand either the severity of his injury, or the import of the document. Peralta nowhere indicates that he himself understood, let alone disclosed to Schreiber, the costs of arbitration that Schreiber would be obligated for, nor does anyone else from K-Sea explain why it asserted a claim to

which the AAA would request \$10,000 for opening the file.

Discussion

In an admiralty or maritime case, state courts must use federal law to resolve the matter, so as to maintain a "single and uniform body of maritime law." In the Matter of the Arbitration between A/S J. Ludwig Mowinckels and Dow. Chemical, 25 N.Y.2d 576, 581 (1970). The Federal Arbitration Act ("the FAA"), 9 U.S.C.S. § 1, specifically exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" from its coverage. As an engineer on a tugboat that was traveling from Florida to Louisiana, it is undisputed that Schreiber was a seaman and engaged in interstate commerce at the time of his alleged accident.

Schreiber claims that because of this exemption, the arbitration agreement that he signed is unenforceable. K-Sea counters that the arbitration is a post-contract-of-employment maritime transaction that falls within the coverage of the FAA. A written provision in a "maritime transaction or a contract evidencing a transaction involving commerce" to use arbitration to settle a controversy is "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

A similar arbitration agreement was held not to be

subject to the exception clause of § 1 of the FAA, and was interpreted as constituting "a maritime transaction or a transaction involving commerce within the meaning of § 2 of the FAA". Endriss v. Eklof Marine Corp., 1998 U.S. Dist. Lexis 23231 at 14 (SDNY 1998). The reasoning of Endriss is sound.

The employment relationship between K-Sea and Schreiber did not condition Schreiber's job on his acceptance of arbitration for all potential legal disputes that might arise between the two parties. Schreiber's employment conditions were negotiated in a collective bargaining agreement. The agreement at issue here is for the specific purpose of resolving claims that arose from a specific event.

Furthermore, the United States Supreme Court has interpreted the phrase "involving commerce" in § 2 of the FAA, and the reach of the FAA in validating arbitration agreements to be as broad as the reach of Congress in regulating interstate commerce. Allied Bruce Terminix Cos., Inc., v. Dobson, 513 U.S. 265, 273-80 (1995). Thus, Schreiber's arbitration agreement with K-Sea, on its face, is valid.

This does not end the inquiry. Seamen are wards of the courts, and their rights have been carefully guarded and protected at least as far back as the early 19th century. Harden v. Gordon, 11 F.Cas. 480, 485 (C.C.D. Me. 1823) (No. 6047). "[R]eleases by seamen are subject to careful scrutiny by the

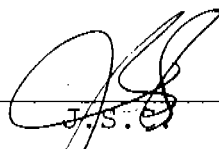
courts. The shipowner must establish that the release was freely executed, without deception or coercion, and that it was made with a full understanding of the rights relinquished thereby." Gibson v. Am. Export Isbrandtsen Lines, Inc., 125 A.D.2d 65, 69-70 (1st Dept. 1987). Here, because Schreiber not only released his right to a jury trial, but accepted a financial burden disproportionate to his ability to pay, K-Sea, the shipowner, must show that there was no deception or coercion on its part, and that Schreiber understood his obligations under the agreement. This it has not done. Although a post injury, post-contract-of-employment arbitration agreement signed by a seaman can be valid, the one here is not. For, in effect, the agreement requires that Schreiber disgorge nearly six months of the settlement advance that enticed him to sign it. That advance now is subject to recoupment in Schreiber's plenary action that may proceed.

Accordingly, it hereby is

ORDERED and ADJUDGED that the petition is granted and the arbitration commenced by petitioner in the name of respondent is permanently stayed.

Dated: August 11, 2004

ENTER:



J.S.S.
JANE S. SOLOMON